

**Department of Attorney General**  
*Peter F. Kilmartin, Attorney General*



**Co-sponsored by the Roger Williams  
University Law Alumni Association**

**Does APRA Apply?**

“or any other public or private agency,  
person, partnership, corporation, or  
business entity acting on behalf of and/or  
in place of any public agency”

*R.I.G.L. § 38-2-2(1)*  
*East Bay Newspaper v. Mt. Hope Trust, PR 10-39*

**Does APRA Apply?**

- Provide documents, not answers
- Provide source documents

*Chase v. DOC, PR 11-05;*  
*Thurber v. Town of North Smithfield, PR 10-09*  
*Campbell v. Town of Tiverton, PR 12-13*  
*Smith v. Warwick Public Schools, PR 12-20*

**The Purpose**

The right to access public  
records and the right to dignity  
and privacy are both  
recognized to be of the utmost  
importance.

*R.I.G.L. § 38-2-1*

**Remedies**

**\$2,000** for a willful and knowing  
violation

**\$1,000** for a reckless violation

Injunctive Relief

Attorney Fees

**Is It a Public Record?**

- Does one of the twenty-five exceptions apply?
- The Balancing Test: Does the individual's privacy interest outweigh the public's interest in disclosure?

## THE EXEMPTIONS

§ 38-2-2(4)(A)-(Y)

May (not Must) be withheld

Any reasonably segregable portion of a public record shall be available

*If entire document is exempt, must state in writing that no reasonable segregable information exists.*

R.I.G.L. § 38-2-3(b);  
*d'Oliveira v. Department of Public Safety, PR 11-10*

**All records relating to a client/attorney relationship, doctor/patient relationship, and all medical information relating to any person.**

R.I.G.L. § 38-2-2(4)(A)(I)(a)

*Individually – identifiable records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy pursuant to the FOIA.*

R.I.G.L. § 38-2-2(4)(A)(I)(b)

### Public Employee Information\*

- name
- gross salary
- salary range
- total cost of paid fringe benefits
- gross amount received in overtime
- other remuneration
- job title
- job description
- *employment contract*
- dates of employment
- positions held with the state, municipality, *or public works projects*
- work location *or project*
- business telephone number
- city/town of residence
- date of termination

### Pension Records

*All public pension records, except medical information and information identifying beneficiaries, unless beneficiary receiving/received benefits.*

R.I.G.L. § 38-2-2(A)(II)

## Law Enforcement

Records maintained by law enforcement agencies for criminal law enforcement are exempt, but only if disclosure could:

*R.I.G.L. § 38-2-2(4)(D)*

- (a) reasonably be expected to interfere with investigations of criminal activity or enforcement proceedings
- (b) deprive a person of the right to a fair trial
- (c) reasonably be expected to constitute an unwarranted invasion of personal privacy

- (d) reasonably be expected to identify a confidential source
- (e) disclose techniques, procedures, or guidelines for law enforcement investigations or prosecutions
- (f) reasonably be expected to endanger the life or physical safety of any individual

Records relating to the management and the direction of a law enforcement agency and records or reports reflecting the initial arrest of an adult are public records

*R.I.G.L. § 38-2-2(4)(D);  
Snow v. Dept. of Public Safety, PR 10-12;  
Valley Breeze v. City of Pawtucket, PR 10-37;  
Walters v. Dept. of Public Safety, PR 11-38;  
WPRI v. Woonsocket Police Department, PR 12-17*

## Adult Arrest Logs

- *Must be made available within 48 hours of a request (72 hours if made on a weekend or holiday).*
- *Applies only to arrests made within 5 days of the request.*

*R.I.G.L. § 38-2-3.2*

## Adult Arrest Logs

- |   |   |
|---|---|
| • <i>Full name of arrested adult;</i>   | • <i>Time of the arrest;</i>  |
| • <i>Home address of arrested adult, unless doing so would identify a crime victim;</i> | • <i>Gender of the arrested adult;</i>  |
| • <i>Year of birth of arrested adult;</i>   | • <i>Race of the arrested adult;</i>  |
| • <i>Charge or charges;</i>   | • <i>Name of the arresting officer unless doing so would identify an undercover officer</i> |
| • <i>Date of the arrest;</i>  |   |

*R.I.G.L. § 38-2-3.2*

Preliminary drafts, notes, impressions, memoranda, working papers, and work products

**Exception:** above documents submitted at a public meeting shall be public

*R.I.G.L. § 38-2-2(4)(K);  
Chrabaszcz v. Johnston School Dept., PR 04-15;  
North East Ind. v. E. Greenwich School Dist., PR 11-12*

Correspondence of/to elected officials with or relating to those they represent and correspondence of/to elected officials in their official capacity

*R.I.G.L. § 38-2-2(4)(M)*

All investigatory records of public bodies pertaining to possible violations of statute, rule, or regulation, other than records of final action taken

*R.I.G.L. § 38-2-2(4)(P)*

Records, reports, opinions, information, and statements required to be kept confidential by federal law, regulation, state law, or rule of court

*R.I.G.L. § 38-2-2(4)(S)*

### **Balancing Test**

Does the privacy interest of the individual outweigh the public's interest in disclosure?

*DARE v. Gannon, 713 A.2d 218, 225 (R.I. 1998)*

### **Public Interest**

“Official information that sheds light on an agency's performance of its statutory duties.”

*Dept. of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749 (1989)*

## Privacy Interest

“[W]here the subject of the documents ‘is a private citizen,’ ‘the privacy interest . . . is at its apex.’”

*National Archives and Records Administration v. Favish*, 541 U.S. 157 (2003)

## Fuka et al. v. R.I. DEM, (Indeglia, J., April 2007)

home addresses of all  
licensed commercial  
fishermen and dealers

*See also Fazzio v. City of Providence*, PR 10-20

“Each public body shall establish  
*written* procedures regarding  
access to public records”

- No written request if available per APA or prepared for/readily available to the public

*R.I.G.L. § 38-2-3(c);*  
*Cf. Stafford v. RI Family Court*, PR 11-13 with  
*Fitzmorris v. Portsmouth Town Council*, PR 11-20

## Procedures Must Include

- *Identification of designated public records officer or unit*
- *How to make a request*
- *Where to make a request*

*No requirement that request be made on form established by public body, provided identifiable as request*

*R.I.G.L. § 38-2-3(d)*

## Procedures

*Copy of procedure shall be posted on the public body's website if maintained and be made otherwise readily available*

## Timeframe to Respond After Receiving a Request

- provide the records within ten (10) business days, **or**
- extend the time period for an additional twenty (20) business days for “good cause,” **or**
- deny access to records within ten (10) business days

*R.I.G.L. § 38-2-7*

### Procedures for Denying Access to Records

- denial must be in writing, **and**
- state the specific reason(s) for the denial, **and**
- indicate the procedure(s) for an appeal in R.I.G.L. § 38-2-8

R.I.G.L. § 38-2-7;  
*Downey v. Carcieri*, 996 A.2d 1144 (R.I. 2010);  
*Warwick Public Schools v. Dept. of Education*, PR 11-08

*“A public body that receives a request to inspect or copy records that do not exist or are not within its custody or control shall \* \* \* state it does not have or maintain the requested records”*

R.I.G.L. § 38-2-7(c)

### Procedures Prior to Providing Records

- *upon request*, provide estimate of charges, **and**
- upon request, detailed itemization of search/retrieval costs, **and**
- perform search/retrieval within reasonable amount of time, **and**
- provide reduction or waiver of search/retrieval costs upon a court order

### Procedures For “Good Cause”

- *Explain in writing need for additional time*
- *Specific to request made*
- *Extend time based upon:*
  - *voluminous nature of request;*
  - *number of pending requests, or*
  - *difficulty in searching/retrieving/copying records*

R.I.G.L. § 38-2-3(c)

### Procedures For “Good Cause”

*Unavailability of designated public records officer shall not be deemed “good cause”*

R.I.G.L. § 38-2-3(d)

### Cost and Delivery Procedures

- \$.15 per photocopy on common/legal size paper
- \$15.00 per search/retrieval hour, no charge for the first hour
- No more than the actual reasonable cost for providing electronic records

R.I.G.L. § 38-2-4



“the costs of redaction should be borne by the requesting party because it is part of the process of retrieving and producing the requested document”

*DARE v. Gannon*, 819 A.2d 651, 661  
(R.I. 2003)

### Cost and Delivery Procedures

*At the option of the person requesting the records, the public body shall provide copies \* \* \* electronically, by facsimile, or by mail \* \* \* unless complying \* \* \* would be unduly burdensome due to the volume of records requested or the costs incurred.*

R.I.G.L. § 38-2-3(k)

### Cost and Delivery Procedures

- *Persons requesting delivery responsible for any actual cost of delivery.*

R.I.G.L. § 38-2-3(k)

- *May assess charge for retrieving records from storage where public body is assessed retrieval fee.*

R.I.G.L. § 38-2-4(a)

### Cost and Delivery Procedures

- *For purposes of calculating search and retrieval time, multiple requests from same person or entity during a 30 day time period shall be considered one request.*

R.I.G.L. § 38-2-4(b)

- *All fees waived if fail to produce requested records in a timely manner.*

R.I.G.L. § 38-2-7(b)

Every person or entity shall have the right to *inspect and/or copy* records

R.I.G.L. § 38-2-3(a)

No requirement to reorganize, consolidate, or compile data not maintained in the requested form

**Exception:** records in an electronic format and not unduly burdensome

R.I.G.L. § 38-2-3(f);  
*Matuszek v. Town of Narragansett*, PR 10-36

“Any person or entity requesting copies of public records may elect to obtain them in any and all media in which the public agency is capable of providing them”

*R.I.G.L. § 38-2-3(e);  
Kent v. RI Office of Energy Resources, PR 10-16*

~~“No person or business entity shall use information obtained from public records pursuant to this chapter to solicit for commercial purposes or to obtain a commercial advantage over the party furnishing that information to the public body.”~~

*R.I.G.L. § 38-2-6*

### Training

*Chief Administrative Officers of all public bodies must certify by January 1<sup>st</sup> of each year that all employees who have authority to grant/deny access to records have received training.*

*R.I.G.L. § 38-2-3.16*

**Department of Attorney General**  
*Peter F. Kilmartin, Attorney General*



**Open Meetings Act**

### Purpose

“It is essential...that public business be performed in an open and public manner and that citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of Public Policy.”

*R.I.G.L. § 42-46-1*

### Threshold Questions

- Is this a “public body”?
- Is there a “quorum”?
- Is this a “meeting”?



## Public Body

“department, agency, commission, committee, board, council, bureau, or authority or any subdivision thereof of state or municipal government”

*R.I.G.L. § 42-46-2(c)*  
*Finlay v. Town of Cumberland, OM 12-06;*  
*Reilly v. PEDP, OM 12-07*

## Quorum

“unless otherwise defined  
... a simple majority of  
the membership”

*R.I.G.L. § 42-46-2(d)*

## “Rolling” or “Walking” Quorum

A series of meetings each less than a “quorum” but that collectively represent a “quorum”

*Ives v. Town of New Shoreham, OM 11-16;*  
*Kenney v. Hopkinton Town Council, OM 10-05*

## Meeting

“The convening of a public body to discuss and/or act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power”

*R.I.G.L. § 42-46-2(a)*  
*Bozyan v. Middletown Town Council, OM 11-17*

## Executive Session

- Every meeting of all public bodies shall be open to the public unless closed pursuant to §§ 42-46-4 and 42-46-5.

*R.I.G.L. § 42-46-3*

- Purposes for which may be closed.

*R.I.G.L. § 42-46-5(a)(1)-(10)*

## R.I.G.L. § 42-46-5(a)(1)

Discussions relating to job performance, character, or physical or mental health of a person(s), provided that:

- such person **shall** receive advanced written notice that discussion may take place in open session
- Public body states in open call and records in open session minutes that notice provided

*Johnson v. West Greenwich Town Council, OM 11-07*

### **R.I.G.L. § 42-46-5(a)(8)**

School Committee sessions to conduct student disciplinary hearings or to review other matters relating to the privacy of students or their records, provided that:

- advanced written notice that discussion may take place in open session
- public body states in open call and records in open session minutes that notice provided

### **R.I.G.L. § 42-46-5(a)(2)**

Sessions or work sessions pertaining to collective bargaining or litigation

*Novak v. Western Coventry Fire District, OM 12-11*

### **R.I.G.L. § 42-46-5(a)(9)**

Any hearings on, or discussions of, a grievance filed pursuant to a collective bargaining agreement

### **OPEN CALL**

- Majority Vote
- Citation and Statement of Discussion
- Not discuss any matter not cited

*R.I.G.L. § 42-46-4(a);  
Graziano v. R.I. Lottery Comm., OM 99-06*

### **Votes**

- An executive session vote must be disclosed as soon as the open session is reconvened
- Within two (2) weeks of any vote a record listing how each member voted on each issue must be available

*Novak v. Western Coventry Fire District,  
OM 12-22*

**Exception:** If disclosure would jeopardize any strategy, negotiation, or investigation

### **Two Types of Notice**

- Annual Notice: at the beginning of each calendar year
- Supplemental Notice: a minimum of 48 hours before every meeting

*Duffy v. West Greenwich Town Council, OM 11-12*

## **Posting Requirements**

- Principal office of public body
- One other prominent location within the governmental unit
- Secretary of State

*R.I.G.L. § 42-46-6(c);  
Stewart et al v. West Greenwich Town Council, OM 11-13*

## **Notice Requirements**

- | <u>Annual</u>   | <u>Supplemental</u>                                    |
|---|--|
| • Dates, times and location of regularly scheduled meetings | • Date, time and location of all meetings              |
| • Available to public upon request                          | • Date posted  |
|   | • <u>Statement specifying business to be discussed</u> |

## **Tanner v. East Greenwich, 880 A.2d 784 (R.I. 2005)**

“such notice, based on the totality of the circumstances, as would fairly inform the public of the nature of the business to be discussed or acted upon.”

## **Improper Notice**

- New Business/Old Business
- Any other matter brought before the Board
- “Directors’ Report”

*Beagan v. Albion Fire District, OM 11-06  
McFadden v. Exeter Bd. of Canvassers, OM 11-04*

## **Executive Session Notice**

- No boiler plate language
- Identify number of items to be discussed
- Statement of each item to be discussed

## **Graziano v. R.I. Lott’y Comm., OM 99-06**

- If publicly known, provide detailed statement
- If not publicly known, may use more general language

### **Improper Notice**

- Executive Session – Pursuant to R.I.G.L. 42-46-5, A,1,2 – Personnel & Litigation & Collective Bargaining

*Andrea v. West Greenwich Town Council, OM 11-14*

- Executive Session: personnel decisions

### **Amending Agenda (Not School Committee)**

- By majority vote
- Informational purposes only and may not be voted on except:
  1. Emergency
  2. Refer matter to another committee/person

*R.I.G.L. § 42-46-6(b);*

*Jenks v. Pascoag Bd. of Fire Comm., OM 10-11*

### **Amending Agenda School Committee**

1. Posted within 48 hours of meeting at:
  - a. The 2 public locations
  - b. Secretary of State
  - c. Posted on School District's website
2. *Amended items unexpected and could not have been added for newspaper publication*
3. *State for record and minutes why agenda items could not have been added in newspaper and need to be addressed at this meeting*

### **Amending Agenda School Committee (Cont.)**

4. Process available to provide timely notice to:
  - a. Any person who has requested
  - b. Reasonable steps taken to make public aware
5. Original notice indicate that changes will be:
  - a. Posted on website
  - b. Posted in 2 locations
  - c. Filed with Secretary of State

*R.I.G.L. § 42-46-6(e)*

### **Minutes: contents**

- the date, time, and place of the meeting
- the members who are absent/present
- a record by individual member of any vote(s) taken
- any other relevant information that a member of the public body requests

*R.I.G.L. § 42-46-7(a)*

### **Minutes: availability**

- Unofficial minutes within 35 days of the meeting, or
- At next regularly scheduled meeting, whichever is earlier

#### **Exception:**

- sealed executive session minutes
- extend time period and publicly state reason

*R.I.G.L. § 42-46-7(b);*

*Hummel v. City of Central Falls, OM 10-13*

## **Minutes**

All state and quasi-public boards shall keep approved minutes and file a copy of all open meetings with the Secretary of State within 35 days of a meeting

**Exception:** Advisory Public Bodies

*R.I.G.L. § 42-46-7(d)*

All open meetings must be accessible to persons with disabilities

*R.I.G.L. § 42-46-13*

## **Public Comment** **(Not School Committee)**

Public body may respond to comments initiated by a member of the public during a properly noticed open forum

*R.I.G.L. § 42-46-6(d)*

## **Public Comment** **School Committee**

Pursuant to a request:

1. Submitted in writing
2. By a member of the public
3. During the public comment session
4. Informational purposes only

*R.I.G.L. § 42-46-6(b)*

Nothing requires any public body to hold an open forum session, to entertain or respond to any topic nor does it prohibit any public body from limiting comment on any topic

*R.I.G.L. § 42-46-6(d);*

*Mankofsky v. Middletown Town Council, OM 11-11*

## **Emergency Meeting**

Upon a majority vote, an emergency meeting may be convened:

“to address an unexpected occurrence that requires immediate action to protect the public.”

*R.I.G.L. § 42-46-6(c);*

*Kalunian v. Coventry Town Council, OM 09-14*